

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1668 OF 2003
WITH
CIVIL APPLICATION NO.1089 OF 2019
WITH
CIVIL APPLICATION NO.1098 OF 2019

Panna Mahendrakumar Vora and Ors. ... Petitioner
Versus
Bombay Wire Rpes Ltd. & Ors. ... Respondents

Ms. Smita Vora, for Petitioner.

None for Respondent.

CORAM : RAJESH S. PATIL, J.

DATED : 8 APRIL 2024

PC.:

This Writ Petition is filed by Plaintiff challenging the Order dated 13 February 2003 passed by the Judge of the Court of the Small Causes, thereby rejecting an application of the Plaintiff, which sought to amend the plaint adding proposed Defendant No.3 as party to the Plaint and also adding a new paragraph as paragraph No.5 (a).

2. By the impugned Order dated 13 February 2003 Judge of the Court of Small Causes held that on the earlier occasion the Plaintiff / Landlord amended the Plaint by incorporating new

paragraph in plaint on 20th February 2002 and 5th March 2002. Therefore there is delay in preferring the present amendment application and there is no sufficient reason given in the application to allow amendment. Hence the application was rejected.

3. The Plaintiff by way of present Writ Petition has challenged the impugned Order in this Court. This Court by its Order dated 28th March 2003 has admitted Writ Petition and has granted stay to the further proceedings of the suit.

4. None appeared for the Respondent when the matter was called out on the earlier occasion. Hence this Court directed Petitioner to again make an attempt to serve the Respondent. The affidavit of service dated 27th January 2023 has been filed by the Petitioner to show that Respondents have again been served.

5. After the Respondents were served, matter was again placed by this Court on 26th March 2024, when nobody appeared for the Respondent, hence the matter was adjourned for today.

6. Today the matter is placed before this Court at serial No.1, again when the matter was called on, none present on behalf of the Respondent.

7. I have heard counsel appearing for Petitioner / Landlord and gone through the impugned Order and the documents placed on record. The Plaintiff had specifically come before the Court with a case that they now understand that the original Defendant sub-let the suit premises to proposed Defendant

No.3. Hence Plaintiff wish to add Defendant No.3 in the title of the plaint and also to add paragraph No.5(a). Paragraph No.5(a) of the amendment reads thus :

The Plaintiffs submit that Defendants have also unlawfully sublet and/or parted with possession of portion of suit premises viz. Office premises no.505 to the Defendant no.3 without obtaining any permission either from the plaintiffs and in breach of provisions of Bombay Rent Control Act. The Respondents are therefore proper and necessary party to the suit and have been ordered to be joined in order to enable the plaintiffs to obtain effective relief against the Defendants.

8. The only ground on which the amendment was not allowed is that the Plaintiff could have amended the plaint on the earlier occasion when Plaintiff had amended the plaint. Therefore only on the ground of delay of more than two years the amendment was rejected.

9. According to me if the Plaintiff / Landlord wants to bring on record the fact that original Defendant has sub-let the suit premises to proposed Defendant No.3, the Court could not have rejected such an amendment, as the Plaintiff had served proposed Defendant No.3 on the address which is registered office address of the Defendant No.3 – Company as available on website of Ministry of Finance, Central Government. The proposed Defendant No.3 chose not to appear in the proceedings and oppose the application.

10. The original Defendant No.1 has also chose not to make any comment on the amendment application.

11. Except bare denial of the amendment application preferred by the Plaintiff, no case was pleaded by the Defendant No.1 as to why the application for amendment to be rejected. So also Defendant No.2 has merely denied the contentions of the amendment application except the fact that the proposed Defendant No.3 is not in possession of the suit premises.

12. In the light of the above analysis There is need to interfere with the impugned Judgment passed by the Trial Court. Hence impugned Judgment and Order dated 13 February 2003 passed by the Trial Court is quashed and set aside.

13. 'Rule' is made absolute.

14. Hearing of R. A. E. Suit No.692/1866 of 1991 is hereby expedited.

15. The Interim Application No.3252 of 2002 is hereby allowed and amendment to be carried out within a period of four weeks from today. After amending the Plaint, Plaintiff to serve the copy of amended Plaint to the Defendant and also to the added Defendant.

16. Defendants are permitted to file Written Statement / Additional Written Statement, after receiving the copy of amended plaint within 4 weeks. As Writ Petition is disposed of. In sequel Civil Applications / Interim Applications are also disposed of.

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(RAJESH S. PATIL, J.)